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5  
6 UNITED STATES DISTRICT COURT  
7 DISTRICT OF NEVADA

8 MARY KAY PECK, an individual,  
9 Plaintiff,

10 v.

11 THE CITY OF HENDERSON, a municipality;  
12 JAMES B. GIBSON, an individual; JACK  
CLARK, an individual; ANDY HAFEN, an  
13 individual; STEVE KIRK, an individual;  
GERRI SCHRODER, an individual; and DOES  
14 1 through 25.

15 Defendants.  
16  
17

CASE NO. 2:09-cv-00872

**PLAINTIFF'S SUPPLEMENTAL  
RESPONSE TO DEFENDANTS'  
SECOND EMERGENCY MOTION TO  
STAY DISCOVERY and REQUEST FOR  
SANCTIONS**

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19 Plaintiff's Supplemental Response is limited to addressing cases cited by Defendants,  
20 many of which neither involve 1983 litigation or address Qualified Immunity issues.

21 Harlow v. Fitzgerald, 457 U.S. 800, 817-819 (1982)

22 ("bare allegations of malice not sufficient to subject government officials to cost and  
23 burden of 'broad reaching' discovery." Id. 818.

24 "... government officials performing discretionary functions generally are shielded from  
25 liability for civil damages insofar as their conduct does not violate clearly established statutory or  
26 constitutional rights of which a reasonable person would have known."

27 "If the law was clearly established, the immunity defense ordinarily should fail . . ." Id.  
28 818, 819.

1 “ . . . we took jurisdiction of the case only to resolve the immunity question under the  
2 collateral order doctrine. We therefore think it appropriate to leave this question for fuller  
3 consideration by the district court and, if necessary, by the Court of Appeals.” Id. 820<sup>1</sup>

4 “We do not view petitioners’ argument on the statutory question as insubstantial.” Id. 820  
5 (Emphasis added).

6 Groh v. Ramirez, 540 U.S. 551 (2004)

7 At page 2, lines 22-25, Defendants quote Ramirez, id 567, “The protection of qualified  
8 immunity applies regardless of whether the government official’s error is ‘mistake of law, mistake  
9 of fact, or a mistake based on mixed questions of law and fact.’” The quote is essentially accurate,  
10 but fails to inform the Court that the statement attributed to the Court’s decision in Ramirez is in  
11 the Dissent written by Justice Kennedy, id. 567. The dispositive finding by the Court is, “The  
12 warrant was plainly invalid.” Id. 557; “. . . did not simply omit a few items . . . stated that the  
13 items consisted of a single dwelling residence . . . blue in color.” “. . . In other words, the warrant  
14 did not describe the items to be seized at all.” Id. 558.

15 Pearson v. Callahan, 129 S.Ct. 808 (2009) is inapposite in that the case at bench does not  
16 involve a Fourth Amendment issue or “consent once removed” doctrine.

17 Mitchell v. Forsyth, 472 U.S. 511 (1985) is inapposite in that the case prohibiting  
18 warrantless wiretaps was decided after the wiretaps were made operative. The Court found the  
19 law was not clear at that time and Mitchell’s qualified immunity protected him from liability.

20 Hunter v. Bryant, 502 U.S. 224 (1991) is inapposite. Arrest by Secret Service officers  
21 based upon a letter that raised concerns of an assassination attempt on the President. Officers  
22 entitled to qualified immunity. Issue, did letter constitute probable cause.

23 U.S. Philips Corporation v. Synergy Dynamics International, LLC, No. 2:05-cv-00577-  
24 PMP-GW. Defendant’s Motion to Stay Discovery denied.

25 Horsley v. Feldt, 304 F.3d 1125 (3d Cir. 2002) is inapposite. Judgment on pleadings  
26 granted, in part, in defamation case.

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28 <sup>1</sup>Nothing in the remand mandate ordered a stay on discovery.

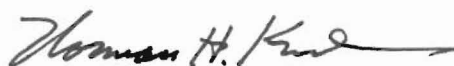
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The balance of the cases cited on the case of the stay are factually inapposite.

Dated: August 10<sup>th</sup>, 2009

Respectfully submitted,

NORMAN H. KIRSHMAN, P.C.



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1 **CERTIFICATE OF MAILING**

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3 I hereby certify that on the 10<sup>th</sup> day of August, 2009, I served a true and correct copy of

4 **“PLAINTIFF’S SUPPLEMENTAL RESPONSE TO DEFENDANTS’ SECOND**

5 **EMERGENCY MOTION TO STAY ALL DISCOVERY and REQUEST FOR**

6 **SANCTIONS”** by:

7 X serving the following parties electronically through CM/ECF as set forth below;

8 \_\_\_\_\_ faxing a copy to the numbers below;


9 \_\_\_\_\_ depositing a copy in the United States mail, first class postage fully prepaid to the

10 persons and addresses listed below:

11

12 William E. Cooper, Esq.  
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17 \_\_\_\_\_  
An Employee of Norman H. Kirshman, P.C.

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